Kolej Universiti Tunku Abdul Rahman v Dr Muhammad bin Omar

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-11ANCvC-72–07 OF 2022
LEONG WAI HONG JC
14 NOVEMBER 2022

Civil Procedure — Appeal — Appeal to High Court — Amount in dispute or value of subject-matter less than RM10,000 — Respondent awarded judgment for RM3,000 — Whether appellant satisfied s 28(1) of Court Judicature Act 1964

The respondent ('plaintiff') was employed as a senior lecturer by the appellant ('defendant') at its Kolej Universiti Tunku Abdul Rahman Pahang branch. He had resigned from his post with the defendant on 15 December 2021 which the defendant had accepted on 17 January 2021. The plaintiff's last day of service with the defendant was agreed to be 14 February 2022. On 21 March 2022 the plaintiff had filed a suit at the magistrate's court against the defendant for non-payment of a 2021 bonus payment to him. He based his claim on a circular 'To All Staff Members Re: Bonus for the Year 2021' dated 20 January 2022 issued by the defendant ('the bonus notice'). The learned magistrate concluded that the plaintiff was entitled to the bonus payment of RM3,000 on the ground that he was still employed by the defendant when the bonus notice was issued. The magistrate awarded judgment for RM3,000 and costs of RM100 and hence this appeal by the defendant.

Held, dismissing the appeal with costs:

(1) As the appeal was only on RM3,000 ie for a sum less than RM10,000, the defendant must satisfy s 28(1) of the Courts of Judicature Act 1964 ('the CJA'). The issue of whether the meaning of the phrase 'the amount in dispute or the value of the subject-matter' in s 28(1) of the CJA referred to the adjudged sum or the sum claimed did not arise as the adjudged sum and the sum claimed was the same ie RM3,000. On either interpretation the amount in dispute or the value of the subject-matter was clearly below the threshold of RM10,000 or less. The defendant would need to show he had a question of law before he could proceed with the appeal (see paras 16, 40 & 44).

(2) The defendant was only questioning the application of law to facts by the magistrate. This could be seen from the submissions where the defendant contended the magistrate had erred in reading into the bonus notice a contractual obligation on the defendant to pay bonus to the plaintiff and also contended the magistrate had erred in interpretation of the bonus

notice when its conditional upon the employee not resigning. Therefore, the appeal did not pose any questions of law for determination. The appeal was incompetent (see paras 49–50).

(3) The law was settled that the question of law need not be framed in the notice of appeal and it was sufficient if it was stated in the memorandum of appeal. The defendant had failed to frame any question of law in the notice of appeal or the memorandum of appeal (see paras 51 & 54).

[Bahasa Malaysia summary

Responden ('plaintif') telah diambil bekerja sebagai pensyarah kanan oleh perayu ('defendan') di Kolej Universiti Tunku Abdul Rahman di cawangan Pahang. Beliau telah meletakkan jawatannya dengan defendan pada 15 Disember 2021 yang telah diterima oleh defendan pada 17 Januari 2021. Hari terakhir plaintif berkhidmat dengan defendan dipersetujui pada 14 Februari 2022. Pada 21 Mac 2022 plaintif telah memfailkan saman di mahkamah majistret terhadap defendan kerana tidak membayar bayaran bonus 2021 kepadanya. Beliau mendasarkan tuntutannya pada pekeliling 'To All Staff Members Re: Bonus for the Year 2021' bertarikh 20 Januari 2022 yang dikeluarkan oleh defendan ('notis bonus'). Majistret yang bijaksana membuat kesimpulan bahawa plaintif berhak mendapat bayaran bonus RM3,000 atas alasan beliau masih bekerja dengan defendan semasa notis bonus dikeluarkan. Majistret memberikan penghakiman untuk RM3,000 dan kos RM100 dan oleh itu rayuan ini oleh defendan.

Diputuskan, menolak rayuan dengan kos:

(1) Memandangkan rayuan hanya RM3,000 iaitu untuk jumlah kurang daripada RM10,000, defendan mesti memenuhi s 28(1) Akta Mahkamah Kehakiman 1964 ('AMK'). Isu sama ada maksud frasa 'amaun yang dipertikaikan atau nilai hal perkara itu' dalam s 28(1) AMK merujuk kepada jumlah yang dihakimi atau jumlah yang dituntut tidak timbul kerana jumlah yang dihakimi dan jumlah dituntut adalah sama iaitu RM3,000. Pada salah satu tafsiran, amaun yang dipertikaikan atau nilai hal perkara itu jelas di bawah ambang RM10,000 atau kurang. Defendan perlu menunjukkan dia mempunyai persoalan undang-undang sebelum dia boleh meneruskan rayuan (lihat perenggan 16, 40 & 44).

(2) Defendan hanya mempersoalkan pemakaian undang-undang terhadap fakta oleh majistret. Ini dapat dilihat daripada hujahan di mana defendan berpendapat bahawa majistret telah terkhilaf membaca ke dalam notis bonus itu satu kewajipan kontrak ke atas defendan untuk membayar bonus kepada plaintif dan juga berpendapat bahawa majistret telah terkhilaf dalam mentafsir notis bonus apabila ia bersyarat terhadap pekerja yang tidak meletak jawatan. Oleh itu, rayuan itu tidak

menimbulkan sebarang persoalan undang-undang untuk penentuan. Rayuan itu tidak kompeten (lihat perenggan 49–50).

(3) Undang-undang adalah mantap bahawa persoalan undang-undang tidak perlu dirangka dalam notis rayuan dan adalah memadai jika ia dinyatakan dalam memo rayuan. Defendan telah gagal merangka sebarang persoalan undang-undang dalam notis rayuan atau memo rayuan (lihat perenggan 51 & 54).]

Cases referred to

Amer Mohideen Dawood v Sneh Bhar w/o Ter Binder Singh [1996] 2 MLJ 329, CA (folld)

Badan Pengurusan Bersama Kompleks Pandan Safari Lagoon v Tam Cheng Meng [2018] 8 MLJ 574; [2018] 8 CLJ 361, HC (refd)

Datuk Aziz Ishak & Anor v YB Hj Khalid Abdul Samad [2012] MLJU 1809; [2012] 1 LNS 1341, CA (folld)

Foong Yok Kok v Prudential Assurance Malaysia Bhd [2020] 2 MLJ 759; [2020] 1 LNS 85, CA (refd)

Harcharan Singh s/o Sohan Singh v Ranjit Kaur d/o S Gean Singh (didakwa sebagai pentadbir harta pesaka Bhagwan Singh s/o Sohan Singh) [2011] MLJU 78; [2011] 3 CLJ 593, FC (refd)

Indah Water Konsortium Sdn Bhd v Yong Kon Fatt [2007] 5 MLJ 250; [2007] 1 MLRA 675, CA (refd)

Kannaya & Anor v Teh Swee Eng [1994] 1 MLJ 508; [1993] 4 MLRH 707; [1994] 3 CLJ 54, HC (refd)

Khairy Jamaluddin v Dato' Seri Anwar bin Ibrahim and another appeal [2022] 4 MLJ 194; [2022] 6 CLJ 163, FC (refd)

Lein Tiam Hock v Arumugam a/l Kandasamy [1999] 6 MLJ 129; [1999] 2 CLJ 853, HC (folld)

Malayan Banking Bhd v Syed Ali Mohsin [1991] 2 MLRH 25, HC (refd)

Mohamad Safuan bin Wasidin & Anor v Mohd Ridhuan bin Ahmad (an infant) [1994] 2 MLJ 187; [1994] 4 MLRH 432, HC (refd)

Monohary Teresa & Anor v Tan Ah Lek [1995] 3 MLJ 365; [1996] 1 CLJ 149, CA (refd)

Neoh Choo Ee & Co Sdn Bhd v Vasalamany Govindasamy & Anor [2004] 3 CLJ 321, CA (refd)

Nor Azman bin Ghadzali v Public Prosecutor [2013] 1 MLJ 486; [2013] 1 CLJ 938, CA (refd)

Yai Yen Hon v Teng Ah Kok & Sim Huat Sdn Bhd & Anor [1997] 1 MLJ 136; [1997] 2 CLJ 68, FC (refd)

Legislation referred to

Courts of Judicature Act 1964 ss 28(1), 50(2), 68(1)(a)

Bryan Chen (Shook Lin & Bok) for the appellant.

The respondent appeared in person.

Leong Wai Hong JC:

INTRODUCTION

[1] This appeal deals with a short legal point. But it is an important point.

[2] I have written this judgment as I have taken judicial notice from a few appeals before me that some lawyers are not aware that 'no appeal shall lie to the High Court from a decision of a subordinate court in any civil cause or matter where the amount in dispute or the value of the subject matter is ten thousand ringgit or less *except on a question of law*'.

[3] This filter is set out in s 28(1) of the Courts of Judicature Act 1964 ('the CJA').

[4] The respondent/plaintiff had sued for RM3,000. After full trial he was awarded judgment for RM3,000 and costs of RM100 from the magistrate. Dissatisfied the appellant/defendant had filed an appeal to the High Court.

[5] However, as the amount in dispute or the value of the subject matter is ten thousand ringgit or less, the appeal must be on a question of law.

[6] I had dismissed the appeal on 10 November 2022 as the appellant/defendant had not raised any question of law in this appeal. These are my grounds of decision.

[7] Parties shall be referred to as they were cited at the magistrates' court.

BACKGROUND FACTS

[8] The plaintiff was employed as a senior lecturer by the defendant at its Kolej Universiti Tunku Abdul Rahman Pahang branch.

[9] He had resigned from his post with the defendant on 15 December 2021 which the defendant had accepted on 17 January 2021. The plaintiff's last day of service with the defendant was agreed to be 14 February 2022 (see record of appeal encl 3 p 36).

[10] Subsequently, on 21 March 2022 the plaintiff had filed a suit at the magistrates' court against the defendant for non-payment of a 2021 bonus payment to him.

[11] He based his claim on a circular 'To All Staff Members Re*: Bonus for the Year 2021*' dated 20 January 2022 issued by the defendant (see record of appeal encl 3 p 22 ('bonus notice'). A

[12] The defendant disagreed. The crux of the defendant's submissions is that 'there is simply no obligation, contractual or otherwise, on the defendant's part to make any bonus payment to the plaintiff' (see plaintiff's written submissions dated 22 September 2022 at para 5). B

[13] At the trial the plaintiff testified in person. The defendant called as its sole witness one Ms Chan Yoke Ying. She is a director of the defendant. C

[14] The learned magistrate after hearing the testimonies of the two witnesses and construing the terms in the bonus notice concluded that the plaintiff was entitled to the bonus payment of RM3,000 on the ground that he was still employed by the defendant when the bonus notice was issued (see the grounds of judgment at para 11 at *rekod rayuan tambahan*). D

[15] The magistrate awarded judgment for RM3,000 and costs of RM100. The defendant had appealed to me. E

THE APPEAL BEFORE ME

[16] As the appeal is only on RM3,000 ie for a sum less than RM10,000 the defendant must satisfy s 28(1) of the CJA. F

[17] Section 28(1) of the CJA reads as follows:

> 28 Civil appeals from subordinate courts
>
> (1) Subject to any other written law, no appeal shall lie to the High Court from *a decision* of a subordinate court in any civil cause or matter *where the amount in dispute or the value of the subject matter* is ten thousand ringgit or less *except on a question of law*. (Emphasis added.) G

[18] A similar provision to s 28(1) of the CJA is s 68(1)(a) of the CJA. Due to their similarities, it will be necessary to refer to s 68(1)(a) of the CJA and cases that construe it when interpreting s 28(1) of the CJA. Therefore, before I consider s 28(1) of the CJA, it would be useful to set out s 68(1)(a) of the CJA and also set out the significant differences in the wordings used in s 28(1) and s 68(1)(a) of the CJA. H I

[19] Section 68(1)(a) of the CJA provides as follows:

> 68 Non-appealable matters.

A (1) No appeal shall be brought to the Court of Appeal in any of the following cases:

(a) When *the amount or value of the subject matter of the claim* (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal. (Emphasis added.)

B

[20] A comparison of s 28(1) of the CJA with s 68(1)(a) of the CJA would show some significant differences in their wordings:

C (a) the words 'from *a decision* of a subordinate court' in s 28(1) of the CJA are missing from s 68(1)(a) of the CJA; and

(b) s 28(1) of the CJA uses the words '*the amount in dispute* or the value of the subject matter' whereas s 68(1)(a) of the CJA uses the words 'the amount or value of the subject matter of the *claim*'. Thus, the words '*the amount in dispute*' in s 28(1) are not present in s 68(1)(a) of the CJA. The word '*claim*' in s 68(1)(a) of the CJA is not present in s 28(1) of the CJA.

D

A REVIEW OF THE LAW ON S 28(1) OF THE CJA

E **[21]** Four issues arise concerning s 28(1) of the CJA. They are:

(a) what is the meaning of the phrase '*the amount in dispute or the value of the subject matter*' in s 28(1) of the CJA? Does it refer to the judgment sum of the subordinate court or the sum claimed by a plaintiff/the combined sum of a claim and a counterclaim?

F

(b) what is the meaning of the phrase '*question of law*' in s 28(1) of the CJA?

(c) must the question of law be set out in the notice of appeal or can it be set out in the memorandum of appeal? and

G (d) do the words 'the amount in dispute or the value of the subject matter is ten thousand ringgit or less' in s 28(1) of the CJA include interest and costs?

H **[22]** I will consider these four issues in the order set out above.

First issue: The meaning of the phrase 'the amount in dispute or the value of the subject matter' in s 28(1) of the CJA

I **[23]** A review of decided cases shows the phrase 'the amount in dispute or the value of the subject matter' in s 28(1) of the CJA has given rise to some degree of uncertainty. Some cases held that it means the judgment sum of the subordinate court. Another line of cases held that it means the sum claimed by a plaintiff or the combined sum of a claim and a counterclaim.

Cases that held that it means the judgment sum

[24] In *Lein Tiam Hock v Arumugam a/l Kandasamy* [1999] 6 MLJ 129; [1999] 2 CLJ 853 (HC) Suriyadi Halim Omar J said at Held (1) (CLJ):

> The amount in dispute or the value of the subject matter' in s 28 of the CJA *must relate to the decision of a subordinate court and not to the sum claimed by a plaintiff or the combined sum of a claim and a counterclaim.* Hence, the amount in dispute or the value of the subject matter in the instant appeal was the judgment sum of RM9,150. The defendant's instant appeal was, therefore, incompetent. (Emphasis added.)

[25] In *Lein Tiam Hock v Arumugam a/l Kandasamy* [1999] 6 MLJ 129; [1999] 2 CLJ 853 (HC) Suriyadi Halim Omar J arrived at his decision after reviewing the Federal Court's decision in *Yai Yen Hon v Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 1 MLJ 136; [1997] 2 CLJ 68 and the Court of Appeal's decision in *Monohary Teresa & Anor v Tan Ah Lek* [1995] 3 MLJ 365; [1996] 1 CLJ 149 on s 68(1)(a) of the CJA.

[26] Suriyadi Halim Omar J in arriving at his preferred interpretation of s 28(1) of the CJA was of the view that it is significant the word 'decision' is absent in s 68(1)(a). Instead, it contains the word 'claim'. This is what Suriyadi Halim Omar J said:

> Section 68 of the Courts of Judicature Act 1964, ... reads:
>
> > (1) No appeal shall be brought to the Court of Appeal in any of the following cases:
> >
> > (a) when the amount or value of the subject matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal ...
> >
> > The Federal Court when discussing the above section in *Yai Yen Hon v Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 1 MLJ 136; [1997] 2 CLJ 68, encountered no difficulty in concluding that the appeal at hand would still be allowed even if the judgment sum were less than RM100,000 (the sum at the material time prior to the amendment). But this was dependant on a particular reason. Chong Siew Fai CJ (Sabah & Sarawak) at para 72 supplied the reason. His Lordship said:
> >
> > In my view no leave of court was required for this particular appeal. Section 68(1)(a) of the Act used the phrase 'amount or value of the subject matter *of the claim*'. *The phrase must be read as a whole.* In the instant case under appeal, the subject matter is the road traffic accident and the claim of the first plaintiff/appellant is for an amount far in excess of RM100,000. That being so, the amount adjudged at the trial assumes little or no significance.
>
> Another case which is relevant for consideration is the case of *Monohary Teresa & Anor v Tan Ah Lek* [1995] 3 MLJ 365; [1996] 1 CLJ 149. In this case the defendant appellant, erroneously thought that leave was required in the circumstances of the

A case, as the judgment sum was below RM250,000 (after amendment by Act A837). He thenceforth filed a motion for that purpose, and due to that time-consuming act, time for his appeal expired. He thereafter applied for an extension of time. Again, the Court of Appeal held that leave to appeal was not required in spite of the award being below RM250,000. *And again, the decision was based on the sum claimed*
B *rather than on the judgment sum. Since we are on the subject of 'decision', it is worthwhile to note at the earliest of stages that that word is absent in s 68(1)(a). Instead, it contains the word 'claim' ...*

I am satisfied that the immediate five cases discussed above are inapplicable to the scenario as envisaged by s 28, as they are easily distinguishable. This provision is
C plain and clear. To use the words of Mohamed Azmi SCJ in the case of *Tan Weng Chiang v Public Prosecutor* [1992] 2 MLJ 625, at p 630:

> *Where the meaning of words in the statute is plain and unambiguous, judges should not invent fancy ambiguities.*

D *Pursuing the tenets of interpretation, I am satisfied that the amount in dispute, or the subject matter provided for under s 28, must relate to the decision of the subordinate court, and not to any sum claimed either by the plaintiff or the combined sum of the claim and counterclaim submitted by the defendant, if any. Apart from attaching weight or significance to that term 'decision', the provision of s 28 must also be read as a whole. Indisputably, it is also beyond denial that the latter provision does not have the terms of*
E *'claim' or 'suit'*, as promulgated in the material provisions discussed in the above cases. If Parliament had wanted to treat ss 28 and 68(1)(a) of the Courts of Judicature Act 1964 in similar fashion, it certainly would not have hesitated to do so. (Emphasis added.)

F **[27]** In *Datuk Aziz Ishak & Anor v YB Hj Khalid Abdul Samad* [2012] MLJU 1809; [2012] 1 LNS 1341 (CA), the Court of Appeal was not dealing with s 28(1) of the CJA. It was construing s 69(1) CJA.

G **[28]** Mohd Hishamudin Yunus JCA construing the phrase 'the amount or value of the subject matter of the claim 'in s 69(1) CJA said, in order to determine the 'amount or value of the subject matter of the claim' for the purpose of s 68(1)(a) of the CJA, the court must look at the adjudged sum and not the amount claimed in the statement of claim.

H **[29]** The Court of Appeal did not follow but distinguished the Federal Court decisions in *Yai Yen Hon v Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 1 MLJ 136; [1997] 2 CLJ 68 and *Harcharan Singh s/o Sohan Singh v Ranjit Kaur d/o S Gean Singh (didakwa sebagai pentadbir harta pesaka*
I *Bhagwan Singh s/o Sohan Singh)* [2011] MLJU 78; [2011] 3 CLJ 593.

[30] Mohd Hishamudin Yunus JCA said:

> We note with dismay that the well-reasoned judgment of the Court of Appeal in *Amer Mohideen* was not considered by the Supreme Court in *Yai Yen Hon*. It is

highly probable that *Amer Mohideen* was somehow inadvertently not brought to the attention of the Supreme Court.

[31] The fuller extract of Mohd Hishamudin Yunus JCA's reasoning can be seen below:

... *The respondent/plaintiff contended that since the adjudged sum was below RM250,000, therefore leave was required* pursuant to s 68(1)(a) of the Courts of Judicature Act 1964.

Section 68(1)(a) of the Courts of Judicature Act 1964 provides:

> 68 Non-appealable matters.
>
> (1) No appeal shall be brought to the Court of Appeal in any of the following cases:
>
> (a) When the amount or value of the subject matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal;

The learned counsel for the appellants/defendants ... argued that the court, in order to determine the 'amount or value of the subject matter of the claim' for the purpose of s 68(1)(a) of the Courts of Judicature Act, *must look at the amount claimed in the statement of claim, and not at the adjudged sum*. The learned counsel relied on *Yai Yen Hon v Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 1 MLJ 136; [1997] 2 CLJ 68 and *Harcharan Singh s/o Sohan Singh v Ranjit Kaur d/o S Gean Singh (didakwa sebagai pentadbir harta pesaka Bhagwan Singh s/o Sohan Singh)* [2011] MLJU 78; [2011] 3 CLJ 593.

With respect, we take a different view.

In our judgment, in the context of the present case, considering that it is the defendants who are appealing, and not the plaintiff, the 'amount or value of the subject matter of the claim' for the purpose of s 68(1)(a) of the Courts of Judicature Act 1964, ought to be the adjudged sum of RM60,000, and not the pleaded sum. We find support for the position that we take in the judgment of the Court of Appeal in *Amer Mohideen Dawood v Sneh Bhar w/o Ter Binder Singh* [1996] 2 MLJ 329. In this case, NH Chan JCA (sitting with KC Vohrah and Mohd Noor Ahmad JJ (as both of them then were)), in delivering the judgment of the Court of Appeal, in clear language ruled (at pp 331–332):

> Counsel for the respondent in this appeal applies by notice of motion for the appeal to be dismissed on the ground that the appellant's appeal to the Court of Appeal is incompetent as the value of the subject matter of the claim under appeal was less than RM250,00 and no leave to appeal to the Court of Appeal was obtained.
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> Section 68(1)(a) of the Courts of Judicature Act 1964 is as follows:
>
> > 68(1) No appeal shall be brought to the Court of Appeal in any of the following cases:

(a) when the amount or value of the subject matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal;

'The amount of the claim' has to mean the total amount or sum of the claim in the action which has been adjudged to be payable, and if it is not a money claim, it is 'the value of the subject matter of the claim' in the action which has been adjudged as recoverable, because it is only against the judgment (and not against the claim made by claimants in their pleadings) that the appeal could be brought. See *Allan v Pratt* [1888] 13 AC 780. The Earl of Selborne, giving the judgment of the Privy Council (consisting of the Earl of Selborne, Lord Watson, Lord Hobhouse and Sir Barnes Peacock), said this, at pp 781–782:

Their Lordships are of opinion that the appeal is incompetent. The proper measure of value for determining the question of the right of appeal is, in their judgment, the amount which has been recovered by the plaintiff in the action and against which the appeal could be brought. Their Lordships, even if they were not bound by it, *would agree in principle with the rule* laid down in the judgment of this tribunal delivered by Lord Chelmsford in the case of *Macfarlane v Leclaire* 15 Moore PCC 181, *that is, that the judgment is to be looked at as it affects the interests of the party who is prejudiced by it, and who seeks to relieve himself from it by appeal.* If there is to be a limit of value at all, that seems evidently the right principle on which to measure it. The person against whom the judgment is passed has either lost what he demanded as plaintiff or has been adjudged to pay something or to do something as defendant . It may be that the value to the defendant of an adverse judgment is greater than the value laid by the plaintiff in his claim. If so, which was the case in *Macfarlane v Leclaire*, it would be very unjust that he should be bound, not by the value to himself but by the value originally assigned to the subject matter of the action by his opponent. The present is the converse case. A man makes a claim for much larger damages than he is likely to recover. The injury to the defendant, if he is wrongly adjudged to pay damages, is measured by the amount of damages which he is adjudged to pay. That is not in the least enhanced to him by the fact that some greater sum had been claimed on the other side.

...

The appellant (who was the defendant in the High Court) as 'the person against whom the judgment is passed ... has been adjudged ... to do something as defendant', namely, he was ordered specifically to perform the sale and purchase agreement dated 14 September 1989. An appeal against that judgment will be prohibited if the value of the subject matter of the judgment for specific performance is below the value of RM250,000 (if leave to appeal to the Court of Appeal has not been obtained).

If 'the amount of the claim' or 'the value of the subject matter of the claim' is to be based on the claim as pleaded in the statement of claim and not in the judgment, then the purpose of s 68(1)(a) of the Act could be circumvented quite easily by claimants merely stating in their pleadings, in every case, that they are claiming for more than RM250,000. This easy way to get round the need to obtain leave makes the entire provision of s 68(1)(a) of the Act superfluous. This is how it was

put by Mahadev Shankar JCA in *Monohary Teresa v Tan Ah Lek* [1995] 3 MLJ 365, at p 368:

> *Such an approach … could side-track the purpose of s 68(1)(a) because claimants could get round the need to obtain leave merely by stipulating in their pleadings that they are claiming for more than RM250,000 in every case.*

In *Yai Yen Hon* it was an accident case involving the plaintiff's car and the defendants' lorry; and the sum claimed by the plaintiff against the defendants before the High Court was over RM4m as special and general damages. But the High Court awarded the plaintiff only a sum of RM62,400 for special and general damages. Dissatisfied with the sum awarded, the plaintiff appealed to the Supreme Court *The Supreme Court held that leave was not required since for the purpose of s 68(1)(a) of the Courts of Judicature Act the amount or value of the subject matter of the claim was the sum claimed in the statement of claim (over RM4m) and not the sum awarded by the High Court (RM62,400).*

We are mindful of the fact that *Yai Yen Hon* is a decision of the Supreme Court. However, that case can be distinguished in that in that case it was the plaintiff who was appealing, whereas in the instant case, just as in the case of *Amer Mohideen*, it was the defendant who is appealing. We take the position that where it is the defendant who is appealing (as opposed to the plaintiff being the appellant), then, the *Amer Mohideen* principle must prevail and that the adjudged sum must be the determining factor and not the sum claimed in the statement of claim; and if the adjudged sum is less than RM250,000, the defendant must obtain leave in order to appeal. We note with dismay that the well reasoned judgment of the Court of Appeal in *Amer Mohideen* was not considered by the Supreme Court in *Yai Yen Hon*. It is highly probable that *Amer Mohideen* was somehow inadvertently not brought to the attention of the Supreme Court. Be that as it may, the Supreme Court in *Yai Yen Hon*, nevertheless, did say:

> There might well be cases where the sums adjudged may be validly taken into account; the instant appeal before us, however, is not one such case.

In *Harcharan Singh* the issue before the Federal Court was whether s 68(1)(a) of the Courts of Judicature Act applies where the subject matter of the claim was for a declaration coupled with a claim for ancillary reliefs. Thus *Harcharan Singh* is not so much of a case dealing with the issue of whether, for the purpose of interpreting s 68(1)(a) of the Courts of Judicature Act, it should be the adjudged sum or whether it should be the sum claimed in the statement of claim. Moreover, in *Harcharan Singh*, like in *Yai Yen Hon*, it was the plaintiff who was appealing to the Court of Appeal (and, subsequently, to the Federal Court) and not the defendant. And, like *Yai Yen Hon*, the Federal Court, in its brief judgment, did not consider *Amer Mohideen.*

...

In the present application, *we, therefore, rule that since the adjudged sum was only RM60,000, leave of the Court of Appeal under s 68(1)(a) of the Courts of Judicature Act is required;* and since no prior leave has been obtained, the instant appeal is incompetent. (Emphasis added.)

[32] In *Foong Yok Kok v Prudential Assurance Malaysia Bhd* [2020] 2 MLJ 759; [2020] 1 LNS 85 (CA), the Court of Appeal followed *Amer Mohideen Dawood v Sneh Bhar w/o Ter Binder Singh* [1996] 2 MLJ 329 (CA) and ruled that the 'amount' or 'value' must be 'the total amount of the claim in the action which has been adjudged to be payable' or the value of the subject matter of the claim 'in the action which has been adjudged as recoverable because the appeal is against the judgment (and not against the claim made by the claimants in the pleadings)'.

[33] Kamardin Hashim JCA said:

> [37] In *Amer Mohideen Dawood v Sneh Bhar w/o Ter Binder Singh* [1996] 2 MLJ 329 this court on similar issue decided that: 'The amount of the claim' has to mean the total amount or sum of the claim in the action which has been adjudged to the payable, and if it is not a money claim, it is 'the value of the subject matter of the claim' in the action which has been adjudged as recoverable, because it is only against the judgment (and not against the claim made by claimants in their pleadings) that the appeal could be brought. See *Allan v Pratt* [1888] 13 AC 780. *The Earl of Selborne*, Lord Watson, Lord Hobhouse and Sir Barnes Peacock), said this, at pp 781–782:
>
> > Their Lordships are of opinion that the appeal is incompetent. The proper measure of value for determining the question of the right of appeal is, in their judgment, the amount which has been recovered by the plaintiff in the action and against which the appeal could be brought. Their Lordships, even if they were not bound by it, would agree in principle with the rule laid down in the judgment of this tribunal delivered by Lord Chelmsford in the case of *Macfarlane v Leclaire* 15 Moore PCC 181, that is, that the judgment is to be looked at as it affects the interests of the party who is prejudiced by it, and who seeks to relieve himself from it by appeal. If there is to be a limit of value at all, that seems evidently the right principle on which to measure it. The person against whom the judgment is passed has either lost what he demanded as plaintiff or has been adjudged to pay something...

[34] In *Khairy Jamaluddin v Dato' Seri Anwar bin Ibrahim and another appeal* [2022] 4 MLJ 194; [2022] 6 CLJ 163 (FC), *Datuk Aziz Ishak & Anor v YB Hj Khalid Abdul Samad* [2012] MLJU 1809; [2012] 1 LNS 1341 (CA) was cited as an authority by the respondent who argued that the appeal was incompetent as the adjudged value was below RM250,000 and no prior leave to appeal had been obtained.

[35] The appellant disagreed and contended that even though the adjudged sum is less than RM250,000, leave to appeal to the Court of Appeal was not required as the threshold is the value of the subject matter and not the subject matter of the decision. However, the Federal Court did not answer this issue.

Cases that held that it means the sum claimed by a plaintiff or the combined sum of a claim and a counterclaim

[36] In *Badan Pengurusan Bersama Kompleks Pandan Safari Lagoon v Tam Cheng Meng* [2018] 8 MLJ 574; [2018] 8 CLJ 361 (HC) Faizah Jamaludin JC was of the view that s 28(1) of the CJA refers to the sum claimed by the plaintiff and not the sum adjudged by the magistrate.

[37] Her ladyship disagreed with *Lein Tiam Hock v Arumugam a/l Kandasamy* [1999] 6 MLJ 129; [1999] 2 CLJ 853 (HC) and said:

> Preliminary Objection
>
> [11] The defendant raised a preliminary objection that the plaintiff's appeal to the High Court is incompetent by virtue of s 28(1) of the Courts of Judicature Act 1964 ('the CJA'). Section 28 of the CJA states:
>
> > 28 Civil appeals from subordinate courts
> >
> > (1) Subject to any other written law, no appeal shall lie to the High Court from a decision of subordinate court in any civil cause or matter where the amount in dispute or the value of the subject matter is ten thousand ringgit or less except on a question of law.
>
> [12] The defendant refers to the High Court's decision in *Lein Tiam Hock v Arumugam a/l Kandasamy* [1999] 6 MLJ 129; [1999] 2 CLJ 853; [1999] 2 CLJ 853; [1999] 3 AMR 3670, where Suriyadi Halim Omar J (as he then was) held that the 'amount in dispute' or the 'value of the subject matter' under s 28 of the CJA:
>
> > must relate to the decision of the subordinate court, and not to any sum claimed either by the plaintiff or the combined sum of the claim and counter-claim submitted by the defendant, if any.
>
> [13] His Lordship came to the said conclusion after distinguishing the decisions of the Federal Court in *Yai Yen Hon v Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 1 MLJ 136; [1997] 2 CLJ 68 *and the Court of Appeal in Teresa Monohary Thairiyam & Anor v Tan Ah Lek* [1995] 3 MLJ 365; [1996] 1 CLJ 149. Both these cases considered the provision in s 68 of the CJA, which governs appeals to the Court of Appeal. Section 68 of the CJA states:
>
> > 68 Non-appealable matters
> >
> > (1) No appeal shall be brought to the Court of Appeal in any of the following cases:
> >
> > (a) when the amount or value of the subject matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal;
> >
> > (b) where the judgment or order is made by consent of parties;
>
> [14] In *Yai Yen Hon*, the Federal Court held that the appeal was allowed even if the judgment sum was less than RM100,000 (which was the then threshold sum in

s 68(1)(a) of the CJA). In *Monohary Teresa*, the Court of Appeal held that no leave was required although the judgment sum was less than RM250,000. In both cases, the Federal Court and the Court of Appeal held that the monetary limit set was based on the sum claimed and not the judgment sum. However, Suriyadi Halim Omar J in *Lein Tiam Hock,* distinguished both cases on the grounds that s 28 of the CJA *unlike* s 68 of the CJA had the word 'decision' in it. His Lordship held that s 28 read as a whole meant that the judgment sum of the subordinate court must exceed the sum of RM10,000 to enable an appeal from the subordinate court to the High Court.

[15] Respectfully, I have to disagree with the finding in *Lein Tiam Hock,* which being a decision of the High Court is only of persuasive authority on this court. In my view, s 28 of the CJA read as a whole means that there cannot be an appeal from a decision of a subordinate court in a civil cause or matter, where the amount in dispute or the value of the subject matter is RM10,000 or less. Section 28 does not state 'where the decision of the subordinate court is for a sum of RM10,000 or less'. Similar to ss 68, 28 states 'where the value in dispute or the value of the subject matter' is for a sum of RM10,000 or less. For this reason, in my view, the Federal Court and the Court of Appeal's decisions in *Yai Yen Hon* and *Monohary Teresa* respectively are not distinguishable: they apply to appeals from the decisions of the subordinate courts to the High Court in a civil cause or matter.

[16] *Therefore, notwithstanding that the amount awarded by the magistrate's court is RM3,579.87, the amount in dispute in this instant case is the sum of RM81,413.93 which the plaintiff claims is the service charges owing by defendant as at 22 June 2015.* (Emphasis added.)

[38] In *Harcharan Singh s/o Sohan Singh v Ranjit Kaur d/o S Gean Singh (didakwa sebagai pentadbir harta pesaka Bhagwan Singh s/o Sohan Singh)* [2011] MLJU 78; [2011] 3 CLJ 593 the Federal Court was not dealing with s 28(1) of the CJA. It was construing s 69(1) of the CJA.

[39] Hashim Yusoff FCJ delivering the judgment of the court said:

Court's findings

[12] We agree with the Court of Appeal's decision in *Mohd Tahir Mohd Sheriff v Ramlah Abdullah* [2004] 1 CLJ 865 that s 68(1)(a) of the Act is unambiguous. It clearly states that no appeal shall be brought to the Court of Appeal when the amount or value of the subject matter of the claim (exclusive of interest) is less than RM250,000, except with leave of the Court of Appeal.

[13] This appeal therefore hinges on the value of the disputed property. *The phrase 'amount or value of the subject matter of the claim'. Section 68(1)(a) of the Act was considered by the Supreme Court in Yai Yen Hon v Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 1 MLJ 136; [1997] 2 CLJ 68 *where it was held that it must be read as the amount or value of the claim filed in the civil suit and not the judgment amount granted against.* That would be the determinant factor in deciding whether leave was necessary. (Emphasis added.)

Application of law to the facts

[40] Mercifully, the issue whether the meaning of the phrase 'the amount in dispute or the value of the subject matter' in s 28(1) of the CJA refers to the adjudged sum or the sum claimed does not arise in this appeal as the adjudged sum and the sum claimed is the same ie RM3,000. On either interpretation the amount in dispute or the value of the subject matter is clearly below the threshold of ten thousand ringgit or less.

[41] However, to use the idiom *if push comes to shove*, I find the reasoning of the High Court in *Lein Tiam Hock v Arumugam a/l Kandasamy* [1999] 6 MLJ 129; [1999] 2 CLJ 853 (HC), the Court of Appeal in *Amer Mohideen Dawood v Sneh Bhar w/o Ter Binder Singh* [1996] 2 MLJ 329 (CA) and *Datuk Aziz Ishak & Anor v YB Hj Khalid Abdul Samad* [2012] MLJU 1809; [2012] 1 LNS 1341 (CA) compelling.

[42] One may disagree with the Court of Appeal's decision in *Datuk Aziz Ishak & Anor v YB Hj Khalid Abdul Samad* [2012] MLJU 1809; [2012] 1 LNS 1341 (CA) as the Court of Appeal there failed to follow the contrary view of the Federal Court in both *Yai Yen Hon v Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 1 MLJ 136; [1997] 2 CLJ 68 and *Harcharan Singh s/o Sohan Singh v Ranjit Kaur d/o S Gean Singh (didakwa sebagai pentadbir harta pesaka Bhagwan Singh s/o Sohan Singh)* [2011] MLJU 78; [2011] 3 CLJ 593. The Court of Appeal was bound to follow the Federal Court based on the principle of stare decisis (Latin, to stand by decided matters).

[43] Since the public policy purpose of the filter in s 28(1) of the CJA is to prevent appeals on small sums from subordinate courts from clogging the High courts unless they concern a question of law, it makes sense that the phrase 'the amount in dispute or the value of the subject matter' in s 28(1) of the CJA refers to the adjudged sum and not the sum claimed. Such an interpretation will also prevent a well-heeled litigant from oppressing the not so well-heeled litigant with further litigation costs on appeal that far exceeds the adjudged sum which will happen if the filter is not the adjudged sum.

[44] Therefore, the defendant will need to show he has a question of law before he can proceed with this appeal. This brings us to the second issue.

Second issue: What is the meaning of the phrase 'question of law' in s 28(1) of the CJA?

A review of the law on the meaning of the phrase *'question of law'*

[45] In *Nor Azman bin Ghadzali v Public Prosecutor* [2013] 1 MLJ

A 486; [2013] 1 CLJ 938 (CA) Syed Ahmad Helmy JCA delivering the judgment of the court when construing the phrase *question of law* in s 50(2) of the CJA said:

> [11] Section 50 of the CJA relates to the statutory jurisdiction conferred on the Court of Appeal in the hearing and determination of criminal appeals from the lower courts. The full text of section 50 reads as follows:
>
> 50. Jurisdiction to hear and determine Criminal appeals.
>
> (1) ...
>
> (2) An appeal shall lie to the Court of Appeal, with the leave of the Court of Appeal, against any decision of the High Court in the exercise of its appellate or revisionary jurisdiction in respect of any Criminal matter decided by a magistrates' Court but such appeal shall be confined to only *question of law* which have arisen in the course of the appeal or revision and the determination of which by the High Court has affected the event of the appeal or revision.
>
> ...
>
> [17] The crucial element of *'question of law' must* in our view *relate to questions involving the interpretation of relevant and applicable legal principles*. It is totally different from questions of fact which require references to facts and evidence and the inferences drawn from facts. *In essence questions of law are questions involving legal principles of wide applicability in diverse situations and not confined to any particular facts.*
>
> [18] The rationale is best reflected by the passage by Lord Radcliffe in *Edwards (Inspector of Taxes) v Bairstow and Anor* [1956] AC 4 which is reproduced hereunder: As I see it, the reason why the courts do not interfere with commissioners' findings or determinations when they really do involve nothing but the question of fact is not any supposed advantage in the commissioners of greater experience in matters of business or any other matters. The reason is simply that by the system that has been set up the commissioners are the first tribunal to try an appeal, and in the interests of the efficient administration of justice their decisions can only be upset on appeal if they have been positively wrong in law. The court is not a second opinion, where there is reasonable ground for the first. But there is no reason to make a mystery about subjects that commissioners deal with or to invite the courts to impose any exceptional restraints upon themselves because they are dealing with cases that arise out of facts found by commissioners. Their duty is more than to examine those facts with decent respect for the tribunal appealed from and if they think that the only reasonable conclusion on the facts found inconsistent with the determination come to, to say so without more ado.
>
> ...
>
> [27] Hence in the scenario aforesaid can it be said that question of law have evolved within the scope of s 50 of the CJA? The scenario to my mind relates to issues involving determination of facts by the learned magistrate based on the evidence presented before him as a consequence of his guilty plea. No question of law evolved for determination based on the factual findings of the magistrate.
>
> [29] To conclude we *are of the considered view that the application herein does not*

involve the determination of any question of law — it revolves round question of facts and as such is outside the ambit and scope of s 50 of the CJA.

[30] The application is accordingly dismissed. (Emphasis added.)

[46] In *Kannaya & Anor v Teh Swee Eng* [1994] 1 MLJ 508; [1993] 4 MLRH 707 ; [1994] 3 CLJ 54 T Selventhiranathan JC said at p 512 (MLJ); p 710 (MLRH):

Having done so, I am satisfied that *all the grounds of appeal in the memorandum at best relate to the application of the law to the facts and do not involve any question of law alone for decision. Labelling the grounds of appeal as involving questions of law does not metamorphose what are essentially questions of fact into questions of law. The substance is what matters, not the label.* (Emphasis added.)

[47] In *Indah Water Konsortium Sdn Bhd v Yong Kon Fatt* [2007] 5 MLJ 250; [2007] 1 MLRA 675 (CA) Zaleha Zahari JCA said:

[33] *To sum up, labelling all of these questions as 'questions of law' does not metamorphose what is essentially issues of procedure into 'questions of law' of the cited Act and Regulations within the meaning of s 28(1) of the Act.* In this situation I hold that the learned judge had erred in entertaining the appeal as the questions in the respondent notice of appeal were not 'questions of law' within the ambit of s 28(1) of the Act. (Emphasis added.)

[48] To summarise, the principles on what is 'a question of law' that can be distilled from the decided cases are as follows:

(a) questions of law are questions involving legal principles of wide applicability in diverse situations and not confined to any particular facts;

(b) examples of questions of law are — does the presumption of advancement apply in Malaysia? Can a political party sue for defamation in Malaysia?

(c) questions which involve application to facts and evidence and the inferences drawn from facts are not questions of law; and

(d) labelling the grounds of appeal as questions of law does not metamorphose what are essentially questions of fact into questions of law. The substance is what matters, not the label.

Application to facts

[49] In this appeal, the defendant is only questioning the application of law to facts by the magistrate. This can be seen from the submissions filed:

A (a) at encl 7 appellant writ summon para 13 the defendant contends the magistrate had erred in reading into the bonus notice a contractual obligation on the defendant to pay bonus to the plaintiff; and

(b) at appellant writ summon para 15 defendant also contends the magistrate had erred in interpretation of the bonus notice when its conditional upon the employee not resigning.

[50] I am therefore of the view the appeal does not pose any questions of law for determination. This appeal is incompetent.

Third issue: Must the question of law be set out in the notice of appeal or can it be set out in the memorandum of appeal?

The law

[51] The law is now settled that the question of law need not be framed in the notice of appeal and it is sufficient if it is stated in the memorandum of appeal.

[52] In *Mohamad Safuan bin Wasidin & Anor v Mohd Ridhuan bin Ahmad (an infant)* [1994] 2 MLJ 187; [1994] 4 MLRH 432 Malik Ishak J and *Malayan Banking Bhd v Syed Ali Mohsin* [1991] 2 MLRH 25 Lamin J the courts said the notice of appeal must state the question of law.

[53] Both cases were overruled by the Court of Appeal in *Neoh Choo Ee & Co Sdn Bhd v Vasalamany Govindasamy & Anor* [2004] 3 CLJ 321.The Court of Appeal said that there is no such requirement for the appellant to expressly state the question of law in the notice of appeal. Gopal Sri Ram JCA said at Held (3):

> [3] *Malayan Banking Bhd v Syed Ali Mohsin* and *Mohamad Safuan Wasidin & Anor v Mohd Ridhuan Ahmad,* which in essence held that '... Form 140 must state at least in general form the question or questions of law that he wishes to appeal on' were wrongly decided and should no longer be considered good law. (p 330 e-i).

Application to facts

[54] The defendant had failed to frame any question of law in the notice of appeal or the memorandum of appeal.

[55] I am therefore of the view this appeal does not pose any questions of law for determination. This appeal is incompetent.

Fourth issue: Do the words 'the amount in dispute or the value of the subject matter is ten thousand ringgit or less' in s 28(1) of the CJA include interest and costs?

[56] This issue does not arise in view of my finding that this appeal is incompetent.

[57] For completeness, I will however state that the words 'the amount in dispute or the value of the subject matter is ten thousand ringgit or less' in s 28(1) of the CJA do not include interest and costs.

[58] In *Kannaya & Anor v Teh Swee Eng* [1994] 1 MLJ 508; [1993] 4 MLRH 707; [1994] 3 CLJ 54 T Selventhiranathan JC said:

> In my view, *the words 'the amount in dispute or the value of the subject matter is ten thousand ringgit or less' in s 28(1) of the Act do not include interest and costs.* To interpret otherwise would be to place an unnecessary burden on a plaintiff who will have to decide in the first instance in which court to institute proceedings and further to guess as to when his case would be disposed of and as to its outcome. This is because interest and costs will increase with the protraction of the proceedings at first instance itself and they will only be awarded if the plaintiff is successful in the end. If he is not successful, and if he were to have instituted the proceedings in a higher court, he will be burdened with having to pay higher costs. The same would apply in the case of an unsuccessful defendant who is sued in a court higher than that in which he ought to have been sued, if interest and costs were included in the computation of the value of the subject matter. It cannot have been the intention of the legislature to have enacted this provision to invite the plaintiff to first indulge in a guessing game as to the ultimate outcome of his action for the purpose of deciding in which court to institute proceedings. (Emphasis added.)

DECISION

[59] For the reasons stated above, the appeal is dismissed with costs subject to allocatur.

Appeal dismissed with costs.

Reported by Ahmad Ismail